

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-92990; File No. SR-Phlx-2021-53)

September 15, 2021

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Incorporate the Phlx Options 4 Rules By Reference to Nasdaq ISE, LLC Options 4 Rules

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 3, 2021, Nasdaq PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to incorporate the Phlx Options 4 Rules by reference to Nasdaq ISE, LLC (“ISE”) Options 4 Rules.

The text of the proposed rule change is available on the Exchange’s Website at <https://listingcenter.nasdaq.com/rulebook/phlx/rules>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Phlx Options 4 Listing Rules provide for the options that may be listed and traded on Phlx. The Exchange proposes to incorporate the Phlx Options 4 Rules by reference to Nasdaq ISE, LLC (“ISE”) Options 4 Rules.

Options 4, Section 3, Criteria for Underlying Securities

Currently, the Phlx Options 4 Rules are very similar to the ISE Options 4 Rules, except for Options 4, Section 3(h). The differences between the Phlx and ISE Options 4 Rules are non-

substantive technical differences.³ Other changes are non-substantive word choice differences.⁴ Finally, certain rules utilize the phrase “this Rule” instead of a citation.⁵

³ Phlx capitalizes the “of” and “and” in title to Options 4, Section 2, while ISE does not capitalize those words. Phlx Options 4, Section 3(c)(2)(A)(ii) uses a “that” instead of a “than” like ISE. Phlx Options 4, Section 3(c)(3) has an extra phrase “of this Rule” as does Phlx Options 4, Section 3(c)(4)(B)(ii). Also, Phlx Options 4, Section 3(c)(4)(B)(ii) cites to “Options 4, Section 3(b)(5)(i)” instead of “Options 4, Section 3(b)(5)(l)” like ISE. Phlx defines a “market information sharing agreement” within Options 4, Section 3(g)(2), whereas ISE defines the same term within Options 4, Section 3(i). ISE Options 4, Section 4(b)(5) has a reference to “paragraph (b)” where Phlx does not have the reference to (b) it only states of this paragraph. Options 4, Section 4(g) lacks an “if” similar to ISE. Phlx Options 4, Section 4(f)(1) lacks an “of” similar to ISE. ISE Options 4, Section 5(a), unlike Phlx, has an extra “as”, specific reference to “Options 4, Section 6(b)” and use of the phrase “to this Section 5” in two places. ISE Options 4, Section 5(d) has an extra “the.” Phlx Options 4, Section 5 at Supplementary Material .03 is missing a reference to “and QQQ” which should appear as it does in the remainder of the rule filing. Phlx Options 4, Section 5 at Supplementary Material .04 has the term “P.M. settled” where ISE does not and capitalizes some terms that ISE does not capitalize. The word “approximate” appears in Phlx Options 4, Section 5 at Supplementary Material .04(c) and not in ISE. Phlx Options 4, Section 5 at Supplementary Material .04(d) references Options 1, Section 1(b)(13) when it should reference Options 4, Section 3(h) similar to ISE. Options 4, Section 3(f)(1) should have an “and” and an “a” similar to ISE instead of an “or.” Phlx Options 4, Section 5 at Supplementary Material .06 uses the term “Strike Price Program” instead of “Strike Program” like ISE. Phlx Options 4, Section 8 uses the term “intervals” instead of the singular “interval” like ISE and references Options 2, Section 4(c)(1)(A) instead of Options 2, Section 4(b)(4)(i)(A) like ISE. Phlx Options 4, Section 9 uses the term “Exchange-Traded Fund Shares” and ISE uses the term “Fund Shares.” Options 4, Section 10 references different exchange names and terms for members and market makers.

⁴ Options 4, Section 3(f)(4) states, “the SEC has otherwise authorized the listing” whereas ISE states “the SEC has otherwise authorized the listing.” Unlike ISE, Phlx does not have the phrase “In the case of options covering Fund Shares approved pursuant to” at the beginning of Options 4, Section 4(g)(2). ISE Options 4, Section 5(b) uses “shall” and Phlx uses “will.” Phlx Options 4, Section 5 at Supplementary .01 has an extra phrase, “(a) The interval of strike prices of series of options on individual stocks may be:” and a period after Strike Price Interval Program. Phlx Options 4, Section 5 at Supplementary .01(b) uses the term “security” instead of “stock” and numbers the subsections differently. Phlx has the sentence, “A security shall remain in the \$1 Strike Price Interval Program until otherwise designated by the Exchange” and ISE does not have the same sentence, although ISE has the same ability to determine what listings are in the \$1 Strike Price Interval Program. Also, ISE uses the phrase “Strike Price Interval Program” in that paragraph and Phlx uses “Strike Program.”

Also, ISE recently amended its Options 4, Section 3(h)⁶ to make certain amendments which Phlx proposes to adopt in order that its rules may be identical.

First, Phlx would remove rule text within Options 4, Section 3(h) at the end of the paragraph which provides, “all of the following conditions are met.” Paragraph (h) would simply end with “provided that:” and direct market participants to subparagraphs (1) and (2).

Second, the Exchange proposes to capitalize “the” at the beginning of Options 4, Section 3(h)(1) and remove “; and” at the end of the paragraph and instead at a period so that subparagraphs (1) and (2) are not linked, but rather read independently. Today, Options 4, Section 3(h)(1) applies to all Exchange-Traded Fund Shares.

Third, the Exchange proposes to clarify that Options 4, Section 3(h)(2) applies to only international or global Exchange-Traded Fund Shares. Specifically, the Exchange proposes to provide within Options 4, Section 3(h)(2) that, “Exchange-Traded Fund Shares based on international or global indexes, or portfolios that include non-U.S. securities, shall meet the following criteria.” Proposed Options 4, Sections 3(h) generally concerns securities deemed appropriate for options trading. The proposed rule text adds language stating that subparagraph (h)(2) of Options 4, Section 3 applies to the extent the Exchange-Traded Fund Share is based on international or global indexes, or portfolios that include non-U.S. securities. This language is intended to serve as a guidepost and clarify that (1) subparagraph (h)(2) does not apply to an Exchange-Traded Fund Shares based on a U.S. domestic index or portfolio, and (2) subparagraph (h)(2) includes Exchange-Traded Fund Shares that track a portfolio and do not track an index.

⁵ See Phlx Options 4, Section 3(c)(2).

⁶ See Securities Exchange Act Release No. 92226 (June 22, 2021) (SR-ISE-2021-14).

Fourth, the Exchange proposes to remove a phrase within Options 4, Section 3(h)(2)(A), which provides, “for series of portfolio depositary receipts and index fund shares based on international or global indexes.” Today, Options 4, Section 3(h), subparagraphs (h)(1)⁷ and (h)(v)⁸ permit the Exchange to list options on Exchange-Traded Fund Shares based on generic listing standards for portfolio depositary receipts and index fund shares without applying component-based requirements in subparagraphs (h)(2)(B) – (D). By removing the proposed rule text, the Exchange would make clear that subparagraph (h)(2)(A) applies to Exchange-Traded Fund Shares based on international or global indexes, or portfolios that include non-U.S. securities, that are listed pursuant to generic listing standards and comply with Options 4, Section 3(h) and subparagraph (h)(1).

⁷ Subsection (h)(i) concerns passive Exchange-Traded Fund Shares. Subsection (h)(1) provides, “represent interests in registered investment companies (or series thereof) organized as open-end management investment companies, unit investment trusts or similar entities that hold portfolios of securities and/or financial instruments, including, but not limited to, stock index futures contracts, options on futures, options on securities and indices, equity caps, collars and floors, swap agreements, forward contracts, repurchase agreements and reverse repurchase agreements (the “Financial Instruments”), and money market instruments, including, but not limited to, U.S. government securities and repurchase agreements (the “Money Market Instruments”) comprising or otherwise based on or representing investments in broad-based indexes or portfolios of securities and/or Financial Instruments and Money Market Instruments (or that hold securities in one or more other registered investment companies that themselves hold such portfolios of securities and/or Financial Instruments and Money Market Instruments).”

⁸ Subsection (h)(v) concerns active Exchange-Traded Fund Shares. Subsection (h)(v) Provides, “represents an interest in a registered investment company (“Investment Company”) organized as an open-end management company or similar entity, that invests in a portfolio of securities selected by the Investment Company’s investment adviser consistent with the Investment Company’s investment objectives and policies, which is issued in a specified aggregate minimum number in return for a deposit of a specified portfolio of securities and/or a cash amount with a value equal to the next determined net asset value (“NAV”), and when aggregated in the same specified minimum number, may be redeemed at a holder’s request, which holder will be paid a specified portfolio of securities and/or cash with a value equal to the next determined NAV (“Managed Fund Share”).

Fifth, the Exchange proposes to replace the term “comprehensive surveillance agreement” within Options 4, Section 3(h)(2) (A) – (D) with the term “comprehensive surveillance sharing agreement.” This will bring greater clarity to the term. Further, the Exchange proposes to add the phrase “if not available or applicable, the Exchange-Traded Fund’s” within Options 4, Section 3(h)(2)(B), (C), and (D) to clarify that when component securities are not available, the portfolio of securities upon which the Exchange-Traded Fund Share is based can be used instead. The Exchange notes that “not available” is intended for cases where the Exchange does not have access to the index components, in those cases the Exchange would look to the portfolio components. The term “not applicable” is intended if the fund is active and does not track an index and only the portfolio is available. The Exchange also proposes to wordsmith Options 4, Section 3(h)(2)(B) to provide, “any non-U.S. component securities of an index on which the Exchange-Traded Fund Shares are based or if not available or applicable, the Exchange-Traded Fund’s portfolio of securities that are not subject to comprehensive surveillance sharing agreements do not in the aggregate represent more than 50% of the weight of the index or portfolio;”. Finally, the Exchange proposes to wordsmith Options 4, Section 3(h)(2)(C) and (D) to relocate the phrase “on which the Exchange-Traded Fund Shares are based” and add “or portfolio” to bring greater clarity to the rule text by conforming the rule text of (C) and (D) to the language within (B). The Exchange believes that the revised wording will bring greater clarity to the rule text. The Exchange proposes to change “than” to “that” within Options 4, Section 3(C)(2)(A)(ii). Also, the Exchange proposes to change “In” to “in” within Options 4, Section 3(h)(1).

Incorporation by Reference

The Exchange proposes to incorporate by reference the Phlx Options 4 Rules to ISE Options 4 Rules. To that end, Phlx proposes to replace the current Phlx Options 4 Rules with the following rule text:

The rules contained in Nasdaq ISE Options 4, as such rules may be in effect from time to time (the “Options 4 Rules”), are hereby incorporated by reference into this Nasdaq PHLX Options 4, and are thus Nasdaq PHLX Rules and thereby applicable to Nasdaq PHLX members, member organizations, and associated persons and other personnel. Nasdaq PHLX members and member organizations shall comply with the Options 4 Rules as though such rules were fully set forth herein. All defined terms, including any variations thereof, contained in the Options 4 Rules shall be read to refer to the Nasdaq PHLX related meaning of such term. Solely by way of example, and not in limitation or in exhaustion: the defined term “Exchange” in the Options 4 Rules shall be read to refer to Nasdaq PHLX; the defined term “Rule” in the Options 4 Rules shall be read to refer to the Nasdaq PHLX Rule; the defined term “Market Maker” in the Options 4 Rules shall be read to refer to the Nasdaq PHLX Market Maker; the defined term “Primary Market Maker” in the Options 4 Rules shall be read to refer to the Nasdaq PHLX Lead Market Maker; the defined term “Competitive Market Maker” in the Options 4 Rules shall be read to refer to Nasdaq PHLX Market Maker; and the defined terms “Electronic Access Member,” “EAM,” or “Member” in the Options 4 Rules shall be read to refer to the Nasdaq PHLX member organization.

This rule text will account for differences that may exist in the usage of terms as between Phlx and ISE. The proposed rule text list instances in which cross references in the ISE Options 4 Rules to Phlx Options 4 Rules shall be read to refer instead to the Exchange Rules, and references to ISE terms (whether or not defined) shall be read to refer to the Exchange-related meanings of those terms. For instance, references to defined terms “Exchange” or “ISE” shall be read to refer to ISE.

The Exchange proposes to delete in their entirety the Phlx Options 4 Rules and incorporate by reference the ISE Options 4 Rules.⁹ Today, the rules of Nasdaq GEMX, LLC and Nasdaq MRX, LLC are incorporated by reference to the rules of ISE. The Exchange will also separately file to incorporate the Options 4 Rules of Nasdaq BX, Inc. and The Nasdaq Stock Market LLC to the ISE Options 4 Rules, respectively, to ISE. The Exchange believes that harmonizing the Options 4 Rules across its 6 Nasdaq Affiliated Options Exchanges will assist the Exchange in listing options across its affiliated markets. Also, incorporating by reference the ISE Options 4 Rules into the Exchange’s rulebook will organize those listing rules in a more logical order, thereby eliminating unnecessary complexity in the listing process and otherwise streamlining the Exchange’s existing listing rules and their associated procedures.

⁹ The Exchange will separately request an exemption from the rule filing requirements of Section 19(b) of the Act for changes to Phlx Options 4 Rules to the extent such rules are affected solely by virtue of a change to ISE Options 4 Rules. The Exchange’s proposed rule change will not become effective unless and until the Commission grants this exemption request.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹¹ in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest.

The Exchange's proposal to remove the rule text at the end of the paragraph within Options 4, Section 3(h) which provides, "all of the following conditions are met," and creating separate paragraphs for Options 4, Section 3(h)(1) and (2) is consistent with the Act. This will de-link these subparagraphs so they are read independently. Today, Options 4, Section 3(h)(1) applies to all Exchange-Traded Fund Shares. The Exchange's proposal to clarify that Options 4, Section 3(h)(2) applies to only international or global indexes or portfolios that include non-U.S. securities will bring greater clarity to the qualification standards for listing options on Exchange-Traded Fund Shares. ISE Options 4, Section 3(h) currently has similar rule text. Proposed Options 4, Sections 3(h) generally concerns securities deemed appropriate for options trading. The proposed rule text adds language stating that subparagraph (h)(2) of Options 4, Section 3 applies to the extent the Exchange-Traded Fund Share is based on international or global indexes or portfolios that include non-U.S. securities. This language is intended to serve as a guidepost and clarify that (1) subparagraph (h)(2) does not apply to an Exchange-Traded Fund Shares based on a U.S. domestic index or portfolio, and (2) subparagraph (h)(2) includes Exchange-Traded Fund Shares that track a portfolio and do not track an index.

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

The Exchange’s proposal to remove the phrase “for series of portfolio depositary receipts and index fund shares based on international or global indexes,” within Options 4, Section 3(h)(2)(A) is consistent with the Act. Today, Options 4, Section 3(h), subparagraphs (h)(1) and (h)(v) permit the Exchange to list options on Exchange-Traded Fund Shares based on generic listing standards for portfolio depositary receipts and index fund shares without applying component-based requirements in subparagraphs (h)(2)(B) – (D). By removing the proposed rule text, the Exchange would make clear that subparagraph (h)(2)(A) applies to Exchange-Traded Fund Shares based on international or global indexes, or portfolios that include non-U.S. securities, that are listed pursuant to generic listing standards and comply with Options 4, Section 3(h) and subparagraph (h)(1).

The Exchange’s proposal to replace the term “comprehensive surveillance agreement” within Options 4, Section 3(h)(2) (A) – (D) with the term “comprehensive surveillance sharing agreement” is consistent with the Act as the proposed phrase will bring greater clarity to the rule.

Adding the phrase “if not available or applicable, the Exchange-Traded Fund’s” to Options 4, Section 3(h)(2)(B), (C), and (D) is consistent with the Act as it will clarify that when component securities are not available, the portfolio of securities upon which the Exchange-Traded Fund Share is based can be used instead. This rule text currently exists within ISE Options 4, Section 3(h).

The Exchange’s proposal to relocate the rule text within Options 4, Section 3(h)(2)(B), (C), and (D) will bring greater clarity to the current rule text by explicitly providing that the index being referenced is the one on which the Exchange-Traded Fund Shares is based. Also, adding “or portfolio” to Options 4, Section 3(h)(2)(C), and (D) will bring greater clarity to the rule text by conforming the rule text of (C) and (D) to the language within (B).

As proposed herein, the rule text of Options 3, Section 3 will conform to ISE Options 3, Section 3. The proposal remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest by easing the Participants', market participants', and the general public's navigation and reading of the rules, lessening potential confusion, and adding clarity for market participants.

As a general matter, deleting its existing listing rules and incorporating by reference the ISE Options 4 Rules will promote a free and open market, and will benefit investors, the public, and the markets, because the new rules will be clearer, better organized, and simpler. Also, the proposal is just and equitable because it will render the Exchange's listing rules easier for members and member organizations to read and understand.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Removing rule text within Options 4, Section 3(h) at the end of the paragraph and creating separate paragraphs for Options 4, Section 3(h)(1) and (2) does not impose an undue burden on competition, rather it will de-link these subparagraphs so they are read independently. Today, Options 4, Section 3(h)(1) applies to all Exchange-Traded Fund Shares. Clarifying Options 4, Section 3(h)(2) applies to only international or global Exchange-Traded Fund Shares that include non-U.S. securities will bring greater clarity to the qualification standards for listing options on Exchange-Traded Fund Shares. Specifically, this language is intended to serve as a guidepost and clarify that (1) subparagraph (h)(2) does not apply to an Exchange-Traded Fund Shares based on a U.S. domestic index or portfolio, and (2) subparagraph (h)(2) includes Exchange-Traded Fund Shares that track a portfolio and do not track an index. The Exchange

will uniformly apply the criteria within Options 4, Section 3 when it lists options products on Phlx.

Removing rule text within Options 4, Section 3(h)(2)(A) does not impose an undue burden on competition. Today, Options 4, Section 3(h), subparagraphs (h)(1) and (h)(v) permit the Exchange to list options on Exchange-Traded Fund Shares based on generic listing standards for portfolio depositary receipts and index fund shares without applying component-based requirements in subparagraphs (h)(2)(B) – (D). By removing the proposed rule text, the Exchange would make clear that subparagraph (h)(2)(A) applies to Exchange-Traded Fund Shares based on international or global indexes, or portfolios that include non-U.S. securities, that are listed pursuant to generic listing standards and comply with Options 4, Section 3(h) and subparagraph (h)(1). The Exchange will uniformly apply the criteria within Options 4, Section 3 when it lists options products on Phlx.

Replacing the term “comprehensive surveillance agreement” within Options 4, Section 3(h)(2) (A) – (D) with “comprehensive surveillance sharing agreement” does not impose an undue burden on competition as the new phrase will bring greater clarity to the rule.

Adding the phrase “if not available or applicable, the Exchange-Traded Fund’s” to Options 4, Section 3(h)(2)(B), (C), and (D) does not impose an undue burden on competition as it will clarify that when component securities are not available, the portfolio of securities upon which the Exchange-Traded Fund Share is based can be used instead.

Relocating the rule text within Options 4, Section 3(h)(2)(B), (C), and (D) will bring greater clarity to the current rule text by explicitly providing that the index being referenced is the one on which the Exchange-Traded Fund Shares is based. Also, adding “or portfolio” to

Options 4, Section 3(h)(2)(C), and (D) will bring greater clarity to the rule text by conforming the rule text of (C) and (D) to the language within (B).

The Exchange does not expect that its proposed changes to incorporate Phlx's Options 4 Rules to ISE's Options 4 Rules will have any competitive impact on Phlx's listing rules, to the contrary, the Exchange hopes that by clarifying, reorganizing, and streamlining its listing rules, the Exchange's listing process will be clear. The proposed changes will apply equally to all market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act¹² and subparagraph (f)(6) of Rule 19b-4 thereunder.¹³

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the

¹² 15 U.S.C. 78s(b)(3)(A)(iii).

¹³ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2021-53 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2021-53. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m.

and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2021-53 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

J. Matthew DeLesDernier
Assistant Secretary

¹⁴ 17 CFR 200.30-3(a)(12).